

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT MENGO

(CORAM: S.W.W. WAMBUZI C.J., A. ODER J.S.C., H. PLATT J.S.C)

CIVIL APPEAL NO.22/92

BETWEEN

KAMPALA BOTTLERS LTD:.....APPELLANT

AND

DAMANICO (U) LTD:.....DEFENDANT

JUDGMENT OF WAMBUZI, C.J

The appellant, a limited liability company, brought an action in the High Court against the respondent, also a limited liability company, seeking an order of eviction and general damages in trespass.

Briefly the facts were that the appellant is the registered proprietor of approximately 1.030 hectares of land comprised in Lease hold Register Volume 1972, Folio 2, 'Plot No. M 271, Nakawa Industrial Area, Kampala. The appellant alleged that in November, 1991, the respondent trespassed on the appellant's land by clearing and grading the same.

The respondent admitted entry upon the land in question but denied such entry was wrongful as it was by virtue of a grant of a lease in the suit property for a period of five years. The respondent alleged that the certificate of title held by the appellant of the suit property was obtained by fraud.

At the trial, the sole issue was whether or not the appellant obtained its title to the suit property by fraud.

The learned trial Judge found there was fraud and gave judgment in favour of the respondent. The appellant has now appealed to this Court against the decision of the High Court on two grounds namely,

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ely,

- ”1. That the learned trial Judge erred in law in holding that the certificate of title was obtained by fraud.
2. The learned trial Judge erred in law in not awarding the reliefs prayed for.”

In arguing the first ground, Dr. Byamugisha for the appellant, submitted that by a letter dated 13th October, 1988 exhibit P.2, the appellant who had initially obtained a lease in respect of the suit property was granted an extension of two years with effect from 1st May,

1988. The Commissioner of Lands was accordingly notified by letter, exhibit P.3. Apparently, it was necessary to re-survey the plot, which was done. The City Council of Kampala demanded ground rent by letter dated 28th August, 1991 which was paid as per exhibit P.7. Exhibit P.1 which is the certificate of title was accordingly prepared and was executed on 26th September, 1991. Learned counsel submitted that by the time the respondent was granted a lease of the same spigot, the appellant had already been registered as proprietor learned counsel submitted that the City Council dealt with the appellant as if it was not necessary to apply for extension of the lease as the lease Offer had not been utilised because of the re-survey which had not been completed until 1991. Learned counsel referred us to sections 184, 42 (4) and 56 of the Registration of Titles Act to the effect that of a registered proprietor cannot be impeached because of irregularities, that fraud must be proved. No particulars of fraud were pleaded and, there is no evidence to support the learned trial Judge's finding of fraud.

For the respondent, Mr. Kateera submitted in effect that a certificate of title is evidence of a grant without which the certificate is meaningless. Learned counsel argued in effect that the grant made to the appellant expired in 1990 and was not renewed. Accordingly the lease subsequently prepared by the Land Office was without authority.

It is not in dispute that the appellant was initially granted a lease over the suit property. The dispute is whether or not this lease

as extended as claimed by the appellant, It is also not disputed that the appellant is the registered proprietor but it is claimed for the respondent that the registration .was obtained by fraud.

In so far as is relevant, section 56 of the Registration of Titles Act provides as follows,

"..... and every certificate of title issued under the provisions herein contained shall be received in all courts as evidence of the particulars therein set forth and of the entry thereof in the Register Book, and shall be conclusive evidence that the person named in such certificate as the proprietor of or having any estate or interest Inthe land therein described is seized or possessed of such estate or interest....."

According to these provisions, it would appear to me that production of the certificate of title in the names of the appellant sufficient proof of ownership of the land in question unless falls within the provisions of section 184 of the Registration of titles Act. The section provides as follows,

"No action of ejectment or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor under the provisions of this Act, except in any of the following cases-

- (a) the case of a mortgagee as against a mortgagor in default;
- (b) the case of a lessor against a lessee In default;
- (c) the case of a person deprived of any land by fraud as against thy person registered as proprietor of such land through fraud or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud;
- (d) the case of o person deprived of or claiming any land included in any certificate of title of other land by misdescription of such other land or of its boundaries as against the registered proprietor of such other land not being a transferee thereof bona fide for value;
- (e) the case of a registered proprietor claiming under a certificate of title prior in date of registration under the provisions of this Act in any case in which two or more certificates of title registered under the provisions of this Act in respect of the same land.

• and in any case other than as a fore said the production of the registered certificate of title or lease shall be held in every court to be an absolute bar and estoppel to any such action against the person named in such document as the grantee, owner, proprietor or lessee of the land therein described, any rule of law or equity to the contrary notwithstanding."

In the first place and needless to say, lack of grant is not one of the grounds for impeaching the title of a registered proprietor on the wording of this section and also of section 56 to which I referred earlier in this judgment. I must, therefore, reject Mr. Kateera's argument that a certificate of title is meaningless unless a grant has been shown to have been made in respect of the land in question.

Secondly on the wording of section 184 it would appear that an action for recovery of land can lie or be sustained only by "a person deprived of any land" against the person registered as appropriator of such land through fraud"

In the case before us it must be shown that the Reliant was registered as proprietor of the land through frauds.

In its written statement of defence, the respondent pleaded in paragraph 6 as follows,

"It is submitted that the certificate of title annexed to the plaint was obtained by fraud as since 1990 the City Council of Kampala never sat to give further extension of the lease to the plaintiff."

Normally where fraud is pleaded, particulars of the fraud must be given. It was submitted before us that the particulars of the fraud in this case were the fact that the City Council did not sit since 1990 to give further extension of the lease to the plaintiff.

I must confess I am a little at a loss as to who was being alleged to have been fraudulent.

Be that as it may, on the question of fraud which in a was the sole issue in the

sole issue in the lower court, the learned trial Judge had this to say,

"The spring board for the issue is to get the meaning of 'fraud'. It is well established law that fraud means actual fraud or some Act of dishonesty. In Waimiha saw milling Co. Ltd Waione Timber Co. Ltd. (1926) AC 101 at P.106 Lord Buchmaster said Now fraud implies some act of dishonesty'. Lord Lindley in Assets Co. vs Mere Roihi (1905) AC 176 stated, Fraud in these action (i.e. actions, seeking to effect (sic) a registered title) means actual fraud, dishonesty of some sort not what is called constructive fraud an unfortunate expression and one may opt to mislead, but often used for want of a better term to denote transactions having consequences in equity similar to those which flow from fraud."

This case was applied by our Court of Appeal in David Seijaaka vs. Rebecca Musoke, CA No. 12 of 1985.

Reviewing the whole evidence and both counsels

Submissions about the issue of fraud

and given the available legal issues, I think Mr. Kateera submissions are unassailable. There was fraud and it was committed' by someone in the land office. That someone had by design incorporated the minute quoted in the lease and persisted in sending the lease document for execution by the Council. The Council Chairman and Town Clerk musfc have perused the lease document containing the said minute. They are supposed to peruse it in any case before signature. However, they went ahead and executed the document on 8.10.91. The minute is the root from which the offer and certificate of title derive their validity.

This has been held to be the legal position in Livingstone Sewanyana vs Martin Alier, CA No. 4 of 1990(SC). In this case the plaintiff under KCC minute DC 20/233/88 dated 7/9/1988 was given a two year lease effective from 1.5.88. For reasons stated the Plaintiff did not apply for extension and there was actually no extension granted by the council.

The Defendant under Min DC 9.8.91 of 9/.9/91 was granted a lease for an initial period of 3 years from 1.10.1991, (Exh. D.1.). Then out of the blue on 8.10.1991 plaintiff was granted a lease for two years from 1 / 8 / 9 1 quoting KCC Min DC/20/23/88 dated 7/1988 (EX.15). This lease was processed by the land

office.

I agree with Mr. Kateera that the Land Office has no general agency to prepare certificates of title.

They only prepare a certificate where they have been instructed by the City Council which is the controlling Authority.

I refer to section 17 of the Public Lands Act.

In this particular case evidence in this respect get was adduced by Dw1 when he stated that a lessee whose lease has expired before the survey (in this Case a re-survey) has been completed, it would still be necessary to re-apply after that re-survey and the

application be subjected to further consideration by the Council. In this case there were no instructions contained in any minute found on the preparation of the certificate which was issued on 8/10/91. The Land⁹ Office by design quoted an earlier minute on which an expired grant had been based. I say by design because I cannot think of any other explanation why a basic matter like a minute should not have put them on notice, fail to understand why the Council Chairman Town Clerk signed the lease without perusing they ought to. Had they perused it they would found out that the lease was ,not a wrong minute (sic) and that barely a week earlier the City council had granted a lease offer to the Defendant of the same plot

The way the 1st has been framed does not compel me to determine who committed the fraud. The facts disclosed an irregularity surrounding the grant so grave as to amount to a dishonest dealing with the grant. Both the Land Office and Council Chairman and Town Clerk share responsibility for this by their refraining from carrying out basic inquiry

In my considered view, there is no sound reason disclosed why the Land Office and that of the council Chairman and Town Clerk could not peruse the minute under the Plaintiff's certificate was processed. That was the basic pre-requisite. They refrained from doing that and the result was fraud. I therefore find that fraud was committed.

Dr. Byamugisha submitted that even if there had been any fraud on the part of the Council, that fraud could not be used to impeach the Plaintiff's title.

In support of this argument, he referred to ss 56 and 184 of the Registration of the Titles Act.

I wish to answer Dr. Byamugisha's argument by the following quote from the case of Robert Lusweswe vs Kasule & Anor HCCS No. 1010 of 1983, where Odoki J. as he then was said,

“therefore while the cardinal rule of registration of the titles under the Act is that the Register is everything, the court can go behind the fact of registration in cases of actual fraud on the part of the transferee”

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0 Taking the last point first and with respect to the learned trial

Judge, I do not think that Dr. Byamugisha's point was answered by the authority cited. If

anything, the authority supports Dr. Byamugisha's

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point and as already indicated in this judgment ,fraud must be attributable to the transferee. I must add here that it must be attributable either directly or by necessary implication. By this I mean transferee must be guilty of some fraudulent act or must have known of such activity Returning to the judgment of the learned trial judge, he seems to have held that there was fraud because he could not Otherwise understand how all was indicated in the Minute of the City Council Meeting.

He went on to find fraud committed by someone in the Land Office by the Chairman of the Council and by the. Town Clerk The latter two apparently for failure to notice the error.

With respect, this verges on constructive fraud if there was any fraud rather than actual fraud as required by the authorities referred to in the lower court. Besides, it was not shown nor did the learned trial judge find that the appellant was guilty of any fraud or that he knew of it. Further, I think it is generally accepted that fraud must be proved strictly, the burden being heavier than on a balance of probabilities generally applied in civi1 matters. The learned trial Judge did not indicate the standard at which fraud had been proved. There may have been negligence on the evidence before the learned trial Judge but equally all those concerned may have thought that the appellant was entitled to a term after the re-survey as the offer had not been utilised.

With respect I am unable to say that fraud was proved against the appellant or anybody for that matter.

I would allow the appeal set aside the judgment and Decree of the High Court and substitute therefore judgment for the appellant with costs here and in the court below

There appears to be evidence that trespass had at some stage ceased and therefore to be evidence therefore there is no necessity for an eviction order. I would otherwise remit the case to the High Court for assessment and grant of general damages for trespass. As both Oder and Platt JJSC agree with my proposed orders it is so ordered.

Given under my hand and the seal of this Court this, ...12th.....day
of JANUARY
of 1995.

S.W.W WAMBUZI
CHIEF JUSTICE

I CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL

B.F.B. BABIGUMIRA
REGISTRAR SUPREME
COURT

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